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TESTIMONY OF THOMAS M. ROBERTS

HEARING

BEFORE THE

SUBCOMMITTEE ON NUCLEAR REGULATION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

TO RECEIVE TESTIMONY FROM HON. THOMAS M. ROBERTS, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

JUNE 3, 1987

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CONTENTS

OPENING STATEMENTS

	Page
Breaux, Hon. John B., U.S. Senator from the State of Louisiana	1
Moynihan, Hon. Daniel Patrick, U.S. Senator from the State of New York	2
Simpson, Hon. Alan K., U.S. Senator from the State of Wyoming	2

WITNESSES

Roberts, Hon. Thomas M., Commissioner, Nuclear Regulatory Commission, accompanied by Terrence O'Donnell, counsel	3
Letter to Senator Breaux	20

TESTIMONY OF THOMAS M. ROBERTS

WEDNESDAY, JUNE 3, 1987

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON NUCLEAR REGULATION,
Washington, DC.

The Subcommittee on Nuclear Regulation met, pursuant to notice, at 9:40 a.m., in room 406, Dirksen Senate Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Senators Breaux, Simpson, Stafford, Moynihan, and Reid.

OPENING STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. The subcommittee will please come to order.

The Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works has embarked on a series of hearings—this is not the only one—that is looking into a number of issues dealing with the Nuclear Regulatory Commission over which this subcommittee has jurisdiction. We have begun to look into areas of the Nuclear Regulatory Commission's responsibility over the industries that they are required by charter and by law to supervise. Our point in all of this is to make sure that the Nuclear Regulatory Commission and their Commissioners are carrying out the law as the Congress intended it to be carried out.

I think every member of this subcommittee and the full committee as well, and the Congress in general, understands completely how important it is for the public to have complete and total and absolute confidence in the Commission if we're ever going to have confidence in the industry that they are entitled to and must regulate.

So our hearings will continue to explore areas of possible conflict, including areas of possible wrongdoing, in order to try to help establish and improve the credibility of the Commission. At our last round of hearings we had asked Commissioner Roberts to visit with us. He asked for additional time to make a determination as to whether he would be prepared to come before the committee to testify about some of the areas that we had asked about at that last meeting. The committee agreed that he would be allowed to have that extra time if he also agreed to restrict his activities on

the Commission from being involved in certain decision-making activities, which he agreed to do.[1]

With that, we are back this morning to continue that hearing, and Mr. Roberts, of course, is our witness at this time.

I'd like to recognize Mr. Simpson to make any comments that he would like to make at this time.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I thank you. I really don't have any formal comments. You've summarized it very well. It is critically important that we have public support of an agency which is responsible for the public health and safety. It's that simple.

In my time as Chairman, one of the most troubling things to me was the composition of the NRC. I strongly feel and still do, that it should be a single Administrator and not this fragmented, five-Commissioner agency. There are no other agencies in Government that have such a direct role in public health and safety as we see here that don't already have the organization of a single Administrator. These things such as we deal with here are distracting.

I've come to know Commissioner Roberts and I think he strives mightily to do what is necessary, just as all of the other four do, but they're never going to get it done under the structures and strictures of the NRC as we know it today.

Senator BREAUX. Thank you, Senator.

Senator Moynihan, any comments?

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Mr. Chairman, just to continue briefly the line of thought that Senator Simpson has set forth and has been doing so well with for some time now.

For one reason or another year in and year out, 10 years on this committee, I find we are having difficulty with the structure of the Federal Government's management, regulation, and advocacy of nuclear power. It's one issue, one Commissioner, one set of regulations after another, and it seems to me that we probably have organized in one Commission the role of advocacy and regulation, and I think they may not be compatible. And it also may be that the Commission form is not a very good administrative form. It's judicial, which may be appropriate for some functions but not for others; in any event, we have yet another problem.

We welcome Mr. Roberts back and I look forward to his testimony.

Senator BREAUX. We thank you for your comments, Senator.

With that we would like to welcome up at this time our witness, Commissioner Roberts. We would like to go ahead and swear you in—I'm sorry, Senator Stafford. Would you have any comments at this time?

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[1] See hearings held before the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, May 6 and 7, 1987 at p. 245.

Senator STAFFORD. No, I have no comments. Thank you, Mr. Chairman.

Senator BREAUX. Very good.

Mr. Roberts, would you raise your right hand, please, and repeat after me?

Do you swear that the testimony that you will give before the committee this morning is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROBERTS. I do.

Senator BREAUX. Thank you very much. We are pleased to have you here. I understand that you have a statement that you would like to present to the committee. We would be pleased to receive it.

TESTIMONY OF HON. THOMAS M. ROBERTS, COMMISSIONER, NUCLEAR REGULATORY COMMISSION, ACCOMPANIED BY TERRENCE O'DONNELL, ESQ., COUNSEL

Mr. ROBERTS. Mr. Chairman, with your permission I would like to read a very brief opening statement.

Mr. Chairman, when I appeared before this subcommittee on May 7th I asked for time to prepare for testimony and consult with counsel. The subcommittee granted my request, and I appreciate that gesture. I want you to know that I have faithfully adhered to the conditions set forth in my statement of May 7th, that I not participate in agency deliberations until my appearance before the subcommittee today.

Although I acknowledge and respect the oversight functions of Congress, I do feel that once a Member of the House or Senate decides to refer a matter to the Department of Justice, it would be appropriate and fair to permit the Department to conclude its inquiry before subjecting the Government official to further questioning on that same matter. The focus of that inquiry, as I understand it, is extremely narrow and discrete with respect to my actions as a Commissioner. Was I responsible for the unauthorized leak of an internal NRC document in 1983? What did I do to satisfy myself in 1985, when the leak was discovered, that no one on my staff had been responsible for it? I am confident that the Justice Department inquiry will clear me of any wrongdoing with respect to each of these questions.

I would note that any Member of Congress can refer a matter regarding a Government official to the Department of Justice at any time on any grounds whatsoever. There is no evidentiary threshold for such a referral. If Congress desires to proceed to explore the matter so referred, the official is confronted with an awkward dilemma. If he declines to testify before Congress with respect to such matters during the pendency of the Justice investigation, he stands criticized by Congress for failure to honor the oversight functions of that body. If he testifies, an act which is inconsistent with the general rule of lawyers experienced in these matters that subjects of a Justice Department inquiry ought not to be making public statements, he runs the risk that any mistaken testimony, no matter how innocent, could be interpreted by the Department as an effort to mislead.

Therefore, testimony given at a time when there is a parallel inquiry at the Department of Justice requires particular caution on the part of the witness so as not to misspeak or testify incorrectly because of failure of recollection. Accordingly, I intend to consult with counsel and refer to documents during my testimony.

I also, with the subcommittee's permission, intend to supplement my answers in writing if appropriate. Further, since I am dealing with events that occurred several years ago, I fully expect that in the future facts will arise which might assist in refreshing my recollection.

I will do my best to answer your questions faithfully and accurately. Thank you.

Senator BREAUX. Thank you very much, Mr. Roberts. Let me just ask a couple of questions to get started.

Will your counsel be testifying, or just advising?

Mr. O'DONNELL. Senator, I will just be advising.

Senator BREAUX. Okay. Do you want to just introduce yourself for the record?

Mr. O'DONNELL. Yes. Terrence O'Donnell, counsel for Mr. Roberts.

Senator BREAUX. I would just like to point out—and I appreciate the comments in your statement, Mr. Roberts, and to assure you and your counsel both, and also the public at large—the responsibility of this committee is not in any way a criminal responsibility. That is the responsibility of another segment of our Government; in this case, the Department of Justice. However, our role as an authorizing committee with responsibility of supervising the NRC brings to task the need for this committee to inquire into the operations of the NRC, the relations of the NRC with the businesses and the industries that the NRC is required by law to regulate.

So while we pursue this matter, we do not pursue it from a criminal standpoint. We pursue it under the obligations that this committee has to ensure that NRC is carrying out the dictates of the charter. Your constitutional rights, of course, are recognized and will be respected by this committee. There's no question about that, and I think that's why we tried so hard to make sure you received the time that you needed in order to prepare your testimony.

Mr. ROBERTS. And I appreciate that very much.

Senator BREAUX. But it's not to say that we should not look into matters that some other agency of the Government may also be looking into. It's an obligation, I think, that we have as a committee. I appreciate your understanding that and also your decision to withhold or withdraw yourself from any matters that were currently pending until we could move on to the subjects at hand.

I'd like to ask you a series of questions. I know you've heard the questions before; we haven't heard the answers yet, so we're not intending to go over a lot of old ground, but I think we would like to go through this series of questions that we have and see if you can respond to them as best you can remember.

When you appeared, Mr. Roberts, before Senator Glenn's Committee on Governmental Affairs on April 9th of this year, you were asked several questions at that time about a memorandum which was dated June 8th, 1983, a memorandum that was sent from a

Mr. James Joosten, the Technical Assistant to then-NRC Commissioner Gilinsky, to Richard DeYoung, then the Director of the NRC Office of Inspection and Enforcement. Is that correct? Do you remember that?

Mr. ROBERTS. Yes.

Senator BREAUX. Prior to or at the time of Senator Glenn's hearing did you have an opportunity to see or review a copy of that memorandum? Or have you had an opportunity to review it prior to today's appearance?

Mr. ROBERTS. Prior to today's appearance?

Senator BREAUX. Well, I mean, have you had an opportunity to review the memorandum?

Mr. ROBERTS. Yes. Yes, sir.

Senator BREAUX. Could you tell us a little bit about the various people that are shown as recipients of the copies of that memorandum? That is, who they are and what their positions were with the Commission at that time, the people who are listed as receiving copies of the memorandum?

Mr. O'DONNELL. Mr. Chairman, may we either receive from the staff a copy or be given a moment to find a copy of that memo?

Mr. ROBERTS. All right. I'm sorry.

The CC's—it was from Jim Joosten, who was Commissioner Gilinsky's Technical Assistant. It was to Dick DeYoung, who was the Director of our Office of Inspection and Enforcement, and the CC's were Dan Garner, who was a Commission Technical Assistant; Jim Millhoam, who was a Commission Technical Assistant; Steve Chesnut, who was my Technical Assistant; John Austin, who was a Technical Assistant; EDO is an acronym for the Executive Director of Operations, and SECY is an acronym for the Secretariat of the Commission.

Senator BREAUX. Were the gentlemen that you listed, were they Technical Assistants to various Commissioners?

Mr. ROBERTS. Yes. Yes, sir.

Senator BREAUX. Mr. Garner is a Technical Assistant to whom, do you remember?

Mr. ROBERTS. Former Chairman Palladino.

Senator BREAUX. And Mr. Millhoan?

Mr. ROBERTS. He was the Assistant to then-Commissioner John Ahearne, who has since left the Commission. Steve Chesnut was my Technical Assistant, and John Austin was the Technical Assistant to Commissioner Asselstine.

Senator BREAUX. Is Mr. Chesnut still working as your Technical Assistant?

Mr. ROBERTS. No, sir. He left me.

Senator BREAUX. And when did he depart, do you remember? About?

Mr. ROBERTS. When did he depart?

Senator BREAUX. Yes.

Mr. ROBERTS. I'm not precisely sure. It was sometime in 1984 or 1985. I'll have to check that. I don't know.

Senator BREAUX. I'm not looking for an actual date. I was just wondering about the time frame of when Mr. Chesnut departed the Commission. You say 1984 or 1985?

Mr. ROBERTS. Yes.

Senator BREAUX. Well, can you tell us the circumstances of his departure? Did he just go off and find a new job, or was he dismissed?

Mr. ROBERTS. Oh, he was not dismissed. He took a job in the private sector. He went to work for Georgia Power, is my understanding.

Senator BREAUX. Do you know if he's still with Georgia Power now?

Mr. ROBERTS. I believe he is.

Senator BREAUX. There's a check mark in the document that you have next to Mr. Chesnut's name. Does that indicate to you that the document is a reproduction of the copy of the memorandum that was sent by Mr. Joosten to Mr. Chesnut in your office?

Mr. ROBERTS. Yes, sir.

Senator BREAUX. On the top of that document, and I refer it to you, there are at least two sets of initials on the top of the document; one, "S.C.," which is connected by an arrow to another, "T.R.," and from the initials "T.R." another arrow goes down the page to the point where somebody has written the word, "Waterford." And below all of this is a date and a time stamp that reads, "83 JUN 9 A 8:54." I presume from all of these markings that Mr. Chesnut received his copy of the Joosten memorandum at 8:54 a.m. on June 9th, 1983, and that at some point after reviewing the document Mr. Chesnut passed it along to you for your information. Would that be a reasonable assumption of the indications?

Mr. ROBERTS. With one minor little nit. The date stamp indicates when it was received by my office, not necessarily when Mr. Chesnut got it. It was received by my office at 8:54 a.m. on June 9th. At some point it was routed to Steve Chesnut. He initialled it. The arrow pointing to "T.R." indicates it is to be routed to me, and the arrow from my initials down to "Waterford" mean it ultimately goes in the file on Waterford. What you've said is essentially correct.

Senator BREAUX. Now, the arrow that goes from the initials "T.R." to the word "Waterford" would mean what?

Mr. ROBERTS. That the document would ultimately be put in the Waterford file, maintained in my office.

Senator BREAUX. That would indicate that it would be put in the Waterford file, I guess, after it had been reviewed by "T.R.," by you?

Mr. ROBERTS. Yes.

Senator BREAUX. Now, the word "Waterford," I guess, in the writing that you have indicated, would mean that it would have been filed in the Waterford file. The "Waterford QA" would be what on the memorandum? It says, "Subject: Waterford QA." Would you just identify the QA as to what that would mean, for the record?

Mr. ROBERTS. QA is an acronym for quality assurance.

Senator BREAUX. Finally, on my copy of the document there are some further partially-legible initials or markings to the right of the initials, "T.R." Do you recognize those markings or recall what they might represent?

Mr. ROBERTS. I'll tell you what they may represent, but I'm not sure. That could be my scrawled initial indicating that I had seen

the document, but I can't—the quality of the reproduction is so bad that I'm not sure I could say that, but it could be the fact that I generally initial everything with three initials, "T.M.R." It's generally a scrawl, and that very well may be what is not very legibly reproduced.

Senator BREAUX. That's how you would normally indicate that you had reviewed something, I guess, just initial it like that?

Mr. ROBERTS. Well, so it won't come back to me.

Senator BREAUX. The "Waterford" word that's written in handwriting, would that be your handwriting?

Mr. ROBERTS. No, I think not. I think that's Steve Chesnut's.

Senator BREAUX. Okay.

When was the next time that you were made aware of this particular document? I understand it was sometime in March of 1985. Would that be about correct?

Mr. ROBERTS. Yes.

Senator BREAUX. Who was it that made you aware of the document at that time, in 1985?

Mr. ROBERTS. Then-Chairman Palladino called me and either in a face-to-face meeting in his office, or by a telephone conversation, Chairman Palladino told me that our Office of Investigations, while conducting an inquiry at Waterford, had discovered a set of documents that I should have some interest in. And I said, fine, but what is all this about? And to the best of my memory on the 13th Chairman Palladino—and I believe I was accompanied by my legal assistant, and I believe the Chairman had his legal assistant with him—the Chairman showed me several memos. One was a memo on the letterhead of Middle South Utilities addressed to several people with Louisiana Power and Light. The memo said, here is an NRC document that should be of interest to you, and there was a further sentence that said, this is a sensitive document; control—this is a paraphrase; this is not precise—control the distribution of this because we want to protect our source at the NRC.

Well, attached to that memo appeared to be my office copy of the memo we were just previously discussing.

Senator BREAUX. Mr. Palladino met with you and presented this to you, then?

Mr. ROBERTS. Yes.

Senator BREAUX. Could you please tell us, after that meeting did he indicate that Mr. Hayes was going to be talking with you or meeting with you?

Mr. ROBERTS. As I recall it, Chairman Palladino told me that Mr. Hayes' people had found this; and I said, fine, send Mr. Hayes and the person who found it over to my office and let's talk about it.

Senator BREAUX. And Mr. Hayes at that time was in what position?

Mr. ROBERTS. He was Director of the Office of Investigations.

Senator BREAUX. Okay. Mr. Hayes has testified before Senator Glenn's committee that you indicated to him that you had questioned all of your staff and that you were confident that the memorandum did not come from your office staff.

Mr. Hayes also testified that you said at that time that perhaps janitorial personnel or perhaps part-time help working in your

office was responsible for the leak. Do you remember having the conversation with Mr. Hayes, essentially along those lines?

Mr. ROBERTS. I remember having a conversation with Mr. Hayes. I cannot recall all of the exact specifics.

I do remember telling Mr. Hayes that I had interrogated my staff, and I was confident that no one on my staff had leaked it, or that certainly I hadn't leaked it.

Senator BREAUX. You had earlier testified, I think, that Mr. Chesnut was no longer in your office at this time. Is that correct?

Mr. ROBERTS. That is correct.

Senator BREAUX. Did you attempt to contact him, wherever he was at that time, and ask him what he knew about the issue?

Mr. ROBERTS. I don't recollect that I did.

Senator BREAUX. Did you similarly attempt to contact any other employees, whether they were full-time or part-time employees, that may have worked for you that were no longer in the office at that time?

Mr. ROBERTS. I do not think I did.

Senator BREAUX. During your meeting with Mr. Hayes or after that meeting, you requested that Mr. Hayes provide you with certain documents. Can you tell us what the nature of that request was, and why you made it?

Mr. ROBERTS. Senator, I was distracted. Would you briefly repeat that again?

Senator BREAUX. When you met with Mr. Hayes, or sometime right after that meeting, you had requested that Mr. Hayes provide you with certain documents. Do you remember what the nature of that request was?

Mr. ROBERTS. Yes. The Chairman had made a formal determination that I should look into this matter. The Chairman was a cautious man. He was not a lawyer. I believe he consulted with his legal assistant; I think, perhaps, he probably consulted with our Office of General Counsel.

Under the Energy Reorganization Act of 1980, the Chairman and I concurred and agreed, and thought it was a matter for me to look into. I did so, and I determined that to the best of my knowledge no one on my staff was responsible for the leak.

I certainly do not minimize the concern about leaked documents. I don't mean to imply that at all, but I would like to point out that this document, the document in question, did not reveal confidential information; was not limited information; and indeed, several months after it was issued, was released to the public via a Freedom of Information Act request. And I frankly didn't think there was anything to be gained by pursuing the matter two years after the fact.

I therefore requested Mr. Hayes' documentation to complete my record. I considered this a matter that related to me. The Chairman had made that determination, and I agreed with his determination, and I wanted Mr. Hayes' file on the matter to have a complete record. And quite frankly, I was apprehensive about an unauthorized leak to the press or to any special interest group in a manner that this information could be used unfairly to bring discredit upon me or upon my staff.

I would further say that my requesting the documents from Mr. Hayes did not deprive Mr. Hayes of his first-hand knowledge of the incident.

Senator BREAUX. Let me——

Mr. ROBERTS. I had misspoken and that's why I was distracted and didn't hear the questions at first.

Mr. Chesnut was at the meeting when I interrogated my staff. I am in error there; he was at that meeting. He subsequently left me for employment in the private sector.

Senator BREAUX. So he was——

Mr. ROBERTS. He was there and working for me when this matter was discovered, and he was part of the group that I interrogated about whether they had any knowledge of this.

Senator BREAUX. And his response to that question was what? That he did not have anything to do with it?

Mr. ROBERTS. That was the understanding he gave to me.

Senator BREAUX. He left your employment after that meeting, sometime?

Mr. ROBERTS. Yes, sir. I'll have to check the personnel records to know precisely when. It wasn't——

Senator BREAUX. But the point is, he was still with you at the time you made the inquiries about who had leaked the information?

Mr. ROBERTS. Yes, that's correct.

Senator BREAUX. Now, you had just said, in your testimony about Chairman Palladino's role in how this process was going to be investigated, and in your letter of May 6th, 1987 to Members of the House of Representatives who had previously written to you requesting your resignation, you indicated that Chairman Palladino, subsequent to your conversations with him on March 13th or 14th of 1985, "made an express and written determination that pursuant to the Reorganization Act of 1980, the responsibility for dealing with it apparently rested with my office." This implies to me—and I think it just said that to the committee, too—that Chairman Palladino on his own initiative made this determination. Is that your understanding?

Mr. ROBERTS. My inclination is to say yes, but we may have—he and I and each of our legal assistants may have discussed that matter. I cannot recall precisely.

Senator BREAUX. I'm trying to get to the point of who decided that the matter to be investigated concerning the leak, perhaps from your office, rested with your office to investigate it. The memorandum to Mr. Ben Hayes from Chairman Palladino says in part that "Commissioner Roberts believes, and I concur, that this is a matter for him to deal with."

The point I'm trying to make is, where did the concept of who was to investigate it come from? Did it come from yourself, and then Mr. Palladino concurred with it, as his memorandum says? Or was he mistaken when he put this out in a memorandum to Ben Hayes?

Mr. ROBERTS. I cannot recall exactly, but it's my recollection that the Chairman and I and each of our legal assistants met to discuss the proper jurisdiction.

If you asked the question of who made the ultimate determination, it was the Chairman.

Senator BREAUX. Did you suggest to the Chairman in conversation——

Mr. ROBERTS. I may or may not have. I don't recall.

Senator BREAUX. My question is, did you sit with the Chairman or convey to him any kind of a statement that would have indicated to him; I'll check into this; I'll look into it; don't worry about it; I'll handle the investigation of it?

Mr. ROBERTS. I wouldn't characterize it in that way. He called me in and said, here, we have this possible problem, and how do we deal with it?

Senator BREAUX. You think you said what to that question from Mr. Palladino?

Mr. ROBERTS. I think I consulted with my legal assistant.

Senator BREAUX. And what would you have conveyed back to him? I'm just trying to find out——

Mr. ROBERTS. Well, we were all in a group. It was the four of us, and I think the Chairman's Executive Assistant, Norm Haller, was there also. And it was more of an atmosphere of, well, here we have this, how do we handle it?

Senator BREAUX. Let me ask you just a few more questions. I don't want to monopolize the time but as long as we've got this train of thought going, I think it's important.

Subsequent to your meeting with Mr. Hayes you testified before Senator Glenn's committee that you "met with every Commissioner, explained the subject as I understood it, told them precisely what I had done, and then destroyed those documents" because "at the time, I thought that was the appropriate thing to do," because "I thought somebody was trying to set me up."

First, what was the nature of the subject as you understood it at the time? And what of your understanding did you specifically communicate to each one of these Commissioners?

Mr. ROBERTS. Chairman Palladino wrote a memo to Mr. Hayes, gave Mr. Hayes his copy. There were carbon copies indicated to the other Commissioners, I being one. As typed on the Chairman's memorandum, the other Commissioners—those other than I—their names were in brackets, and there was a typed note that said to the effect, "Commissioner Roberts will hand-deliver these copies."

I did hand-deliver the other Commissioners' CC copies of Chairman Palladino's memorandum. To the best of my knowledge and recollection, I explained or outlined to each of them my understanding of the situation. I told them that I had interrogated my staff and that I was convinced that the leak had not originated in my office, and to the best of my memory and belief I told them that as far as I was concerned, I was not going to pursue the matter any further.

My testimony before Senator Glenn was inaccurate to the extent that I said I destroyed all the documents. That is not correct; I did not destroy all the documents.

Senator BREAUX. When you met with the Commissioners, you said you delivered the memo to the other Commissioners as the note said on the bottom of the memo from Palladino to Mr.

Hayes—the note on the bottom said, "Commissioner Roberts to deliver these to these Commissioners"——

Mr. ROBERTS. And I believe I did that.

Senator BREAUX. Did you deliver the documents to the Commissioners, or just the memo from Chairman Palladino?

Mr. ROBERTS. As best I recall, I had the documents with me and I showed the documents to them. That's the best of my recollection.

Senator BREAUX. Do you remember leaving a copy of the documents with them?

Mr. ROBERTS. I don't think I did.

Senator BREAUX. Did you indicate to them at that time that you had planned to destroy the documents or that you were going to do away with them?

Mr. ROBERTS. I think, upon careful reflection, I did not say that I was going to destroy the documents.

Senator BREAUX. Did Chairman Palladino or any other Commissioner with whom you spoke raise the issue as to whether or not the matter should be pursued by the Office of Inspections within the NRC?

Mr. ROBERTS. It's possible Chairman Palladino and I discussed that, but I cannot positively say that we did. I also will not say that we did not. I don't recall. The ultimate determination made by the Chairman, which I agreed with, was that it was a matter for me to dispose of.

Senator BREAUX. We have some notes from Ben Hayes which speak of the meeting and the conversation that we're referring to. His note says, "Chairman leaning to Office of Inspection and Audit."

Mr. ROBERTS. Those, as I understand it—when I met with Mr. Hayes and had disposed of the matter and I asked him for all of his "documentation," his files, whatever term you want to use, he handed me two pages of handwritten, pencilled, legal yellow paper notes that recorded, as best I recall, two conversations that he had with the Chairman.

Senator BREAUX. Did you ever consider referring the matters for further investigation to any of these offices?

Mr. ROBERTS. No, sir.

Senator BREAUX. Senator Simpson, I've taken more than my time, but I wanted to get the questions on the record.

Senator SIMPSON. I thank you, Mr. Chairman. You're always very generous. I think that was a very interesting inquiry.

Mr. Roberts, do you think that you have explained for the record with enough completeness—and I just ask this, because I would inquire—the steps that you took to determine whether the document that is at issue here was released from someone in your office? You wanted to find that out, didn't you?

Mr. ROBERTS. I certainly did.

Senator BREAUX. Were they the most thorough steps that you can imagine within your province to do at that time?

Mr. ROBERTS. Well, this is a serious matter and I certainly don't mean to be facetious, but with hindsight I perhaps would have done things a little differently. But at that time, considering the "seriousness of the matter," the content of the memorandum that apparently was leaked, the passage of time, I thought at that time

I sufficiently satisfied myself that it had not originated from my office. And I will say, I was perplexed by the whole thing.

To answer your question, at that time when it was brought to my attention, I believed that I made sufficient inquiry into the matter and I satisfied myself. I trusted my staff. I believed them. They vehemently denied any knowledge of this matter, and as far as I was concerned, I had made sufficient inquiry.

Senator SIMPSON. At least at that time it was sufficient in your mind that you had done all you could to determine that?

Mr. ROBERTS. That's correct. And I would amplify that by saying that I didn't do all of this in a vacuum. I told Mr. Hayes that I was not pursing it, and I told each of the other Commissioners and Chairman Palladino.

Senator SIMPSON. All right.

When that document was released in September, 1983, in response to the Freedom of Information request, were you personally aware, or was it later brought to your attention, that the agency had released the document in response to the FOIA request?

Mr. ROBERTS. I didn't know that until the March 13-14 time frame when I had my office call the Public Document Room or call the Freedom of Information Office and say, has this document been released? That's when I knew that.

Senator SIMPSON. So you weren't aware that the agency had released it?

Mr. ROBERTS. No. I wasn't aware of that until I began making inquiry.

Senator SIMPSON. Does that seem odd to you, that the agency wouldn't, perhaps, have notified you that they had responded to an FOIA request?

Mr. ROBERTS. Well, Senator, I respectfully submit that we are inundated by FOIA requests. The paperwork to notify each of the five Commissioners would be staggering. We get all sorts of requests for information.

Senator SIMPSON. I know you do, but——

Mr. ROBERTS. We have full-time people who don't do anything but respond to those requests.

Senator SIMPSON. Well, I'm thinking if——

Mr. ROBERTS. So it would be unusual—it would not be a normal procedure to notify me that a FOIA request for a particular document had been filed.

Senator SIMPSON. Okay. Even if it may apply to only one Commissioner and not the other four, anything of that nature?

Mr. ROBERTS. I think it would be unusual.

Senator SIMPSON. I wonder if I might ask you or your attorney where things stand on the U.S. Attorney's investigation of the matters that have been referred by Senator Glenn. What is the status of that investigation, please?

Mr. O'DONNELL. Senator Simpson, to tell you the truth, I really don't know. We've had one brief contact with the U.S. Attorney's Office in the District of Columbia, and we were advised that it had been received by that office and that it was under consideration, and I introduced myself as counsel for Mr. Roberts and said to please call if you need information or if you wish to discuss the

matter with us, and I've heard nothing further from the U.S. Attorney's Office.

Senator SIMPSON. Based upon my review of the facts in this particular case under investigation, it appears to me that the allegations that have been made—and perhaps the investigation currently underway by the U.S. Attorney—are based, as you say in your opening statement, on a "discrete series of events surrounding the release of this document to the specific utility" back in 1983.

Do you have any reason to believe that the investigation underway by the U.S. Attorney extends beyond this specific case?

Mr. ROBERTS. I believe, but I'm not sure—I believe there have been several areas introduced for investigation.

Senator SIMPSON. And are you aware of any other allegations that you have——

Mr. ROBERTS. That relate to me?

Senator SIMPSON. Yes.

Mr. ROBERTS. No. No.

Mr. O'DONNELL. Senator Simpson—if I could, Mr. Chairman——

Senator SIMPSON. Yes.

Mr. O'DONNELL. Just to clarify that, I was informed by the U.S. Attorney's Office that there were several matters relating to the NRC, other matters that did not relate to Mr. Roberts, that may be inquired into, but we have not been informed of any allegation against Mr. Roberts by the U.S. Attorney's Office whatsoever. The only allegation or referral that we're aware of is Senator Glenn's referral.

Senator SIMPSON. Okay. There are no other allegations that you have engaged somehow in some improper behavior——

Mr. ROBERTS. Not to my knowledge, Senator Simpson.

Senator SIMPSON [continuing]. Of any criminal nature or civil nature or in the performance of your duties as a Commissioner that extend beyond this specific case?

Mr. ROBERTS. Not to my knowledge.

Senator SIMPSON. I see.

Well, I take it that you intend, then, to resume your official duties as a Commissioner——

Mr. ROBERTS. That's my intention when I leave this room.

Senator SIMPSON [continuing]. In accordance with the agreement entered into by the subcommittee. In that regard, do you intend to participate in activities involving the specific utility involved in this investigation? Or will you recuse yourself from activities involving this utility?

Mr. ROBERTS. I think that point needs to be explored, and it is my intention to consult with our Office of General Counsel and ask for guidance.

Senator SIMPSON. I think I agree with you. I think it is——

Mr. ROBERTS. My inclination would be that I should recuse myself on anything that has to do with Waterford. That's my inclination. I want to consult with the General Counsel.

Senator Simpson, could I clarify several things?

Senator SIMPSON. Surely.

Mr. ROBERTS. When I testified before Senator Glenn, I testified to the best of my recollection at that time. I was not prepared nor

aware that this circumstance was going to be probed in such detail when I appeared before Senator Glenn.

One point—I'm not precisely sure—I may not have told Mr. Hayes I was not pursuing the matter further. I may not have done that. I also may have told him that I was not going to pursue it any further. I can't say with certainty, absolutely that I told Mr. Hayes I was not going to pursue the matter. I think I may have, but I'm unclear.

I did tell the Commissioners that I was not going to pursue the matter any further. I did not destroy the original documents, and therefore I don't believe I told the Commissioners that I did, although I may have said that before Senator Glenn.

Senator SIMPSON. Thank you, Mr. Chairman. I appreciate that very much.

Senator BREAUX. Mr. Roberts, let me get back to some of the things dealing with a slightly different part of the same problem that we've been talking about, back to the March 15th, 1985 meeting when you met with Ben Hayes. Was a Mr. William Ward, who is one of the staff investigators for the NRC, also at that meeting?

Mr. ROBERTS. Yes, and Mr. Cutchin, my legal assistant, was there. There were four of us.

Senator BREAUX. Were you aware of the George White memo prior to the meeting with Mr. Hayes and Mr. Ward and Mr. Cutchin?

Mr. ROBERTS. I think I got the memo from Chairman Palladino.

Senator BREAUX. But do you remember if the White memo was discussed at this meeting with Mr. Hayes and Mr. Ward?

Mr. ROBERTS Yes.

Senator BREAUX. Prior to the meeting had you discussed or shown the White memo to Mr. Cutchin?

Mr. ROBERTS. As best I can recall, Chairman Palladino gave me the White memo on the 13th of March, and that afternoon I called my office in and showed them the White memo and interrogated them, if they had any knowledge of this incident.

Senator BREAUX. So Mr. Cutchin would have known about it? You had shown it to him, I take it, prior to the meeting with Mr. Hayes?

Mr. ROBERTS. To the best of my recollection, yes.

Senator BREAUX. You remember discussing it with Mr. Cutchin at some point, don't you, the White memo?

Mr. ROBERTS. I discussed it with everybody on my staff.

Senator BREAUX. And Mr. Cutchin was on your staff during that time?

Mr. ROBERTS. Yes. Yes, sir.

Senator BREAUX. Was the White memo originally found by Mr. Ward of the Office of Investigations?

Mr. ROBERTS. That is my understanding.

Senator BREAUX. Did Mr. Ward find the memo, to your knowledge, during the course of the Office of Inspections investigation of the Waterford facility?

Mr. ROBERTS. As I recall, Mr. Ward said he was at the plant site, and an employee of the utility said, here's the file; have at it; go through it; look at anything you want. And as I recall, Mr. Ward said that's where he found the White memo.

Senator BREAUX. What was Mr. Ward doing at the Waterford facility, do you know?

Mr. ROBERTS. I don't know precisely, but I think he must have been conducting some sort of investigation. That's his job.

Senator BREAUX. After he obtained the White memo at the Waterford facility pursuant to an investigation by NRC, did that memo then become an NRC document?

Mr. ROBERTS. Did it become what?

Senator BREAUX. An NRC document? I mean, did the document then become the property of the Nuclear Regulatory Commission?

Mr. ROBERTS. Well, I'm not sure I can answer that precisely. I will say this—and I'm anticipating, perhaps, a further question—I consider this a matter that related to me personally, and I asked for all of Mr. Hayes' documentation because I wanted a complete file on a matter I thought related to me personally.

Senator BREAUX. If a document was obtained by an inspector working for the NRC during the conducting of an investigation of the Waterford facility, why would you conclude that that document would be a personal document for you as opposed to a document that belonged to the NRC?

Mr. ROBERTS. Senator, that's a legal issue and I'm not equipped to answer that. It may well be an NRC document. I don't know. But in this particular circumstance I thought this related to me, my conduct, the conduct of my office, and I very strongly felt it related to me.

Senator BREAUX. Well, did Mr. Ward, when he came back from investigating the Waterford plant, come to you and say, here, Mr. Roberts, this is material that relates to you?

Mr. ROBERTS. No, I'm not sure. But as I understand it he went to his superior, Mr. Hayes, and said, here, look what I found, at which point Mr. Hayes went to see the Chairman.

Senator BREAUX. You then took the document, however, and distributed it to the other Commissioners. Would that be something that you would normally——

Mr. ROBERTS. I'm not sure I distributed it to the other Commissioners. I had it with me when I hand-delivered Chairman Palladino's memorandum. My recollection is, I showed it to them. That is my recollection. I do not think I gave them copies.

Senator BREAUX. Do you recall the Freedom of Information request, then, that was numbered 85–184 from Lynn Cunningham of the New Orleans Times-Picayune which requested "all correspondence, memoranda, reports, studies, and other documents that had been generated from the Office of Investigations, investigations or reviews of matters concerning the Waterford 3 nuclear plant at Taft, Louisiana, owned by Louisiana Power and Light"?

Mr. ROBERTS. I don't specifically recall that. And those requests are handled by my office staff.

Senator BREAUX. You are aware that your office received the Freedom of Information request?

Mr. ROBERTS. I would assume they would.

Senator BREAUX. I note that a memorandum dated March 28, 1985, a memorandum for a number of gentlemen, one of which is Mac Cutchin, from Tom Combs, Chief, Correspondence and Records, the subject being the Freedom of Information request

from Lynn Cunningham for records generated as a result of OI investigations or reviews of Waterford 3—there is a note next to Mac Cutchin that indicates, "no documents." And the memo from Tom Combs stated:

> Attached is the subject request. Please search your office files and forward any documents subject to the request, except those originated in another Commissioner or staff office, by COB April 2, 1985. Any recommendation to withhold should be coordinated with the Office of General Counsel.

Was that request brought to your attention? In the normal course of business would it normally be brought to your attention by your staff, or would they handle that without talking to you?

Mr. ROBERTS. They would search the files.

Senator BREAUX. Would it be normal for them to answer the memorandum without speaking with you as to whether there were any documents that would be subject to that Freedom of Information request?

Mr. ROBERTS. That might vary on a case-by-case basis. Just a routine request, I probably wouldn't be consulted.

Senator BREAUX. Well, it was routine only in the sense that Freedom of Information is a routine request. But this is a request dealing with documents that occurred shortly after your meeting with Ben Hayes where you all discussed the George White memo, just a couple of weeks after, as a matter of fact. Therefore I think it takes it out of the category of being a routine request. Don't you agree with that?

Mr. ROBERTS. Yes, it sounds like it would be. But let me say this and clarify so you'll understand.

I didn't destroy the documents I got from Mr. Hayes. I put them in the well of a desk drawer at my personal desk and I had forgotten I had done that. And Mr. Cutchin, in responding to a FOIA request, would not have had any idea what was in my desk drawer. I'm making a supposition; he may have asked me if I had any documentation. I frankly, to this day, don't recall putting those documents in the well of that desk. I do not recall it. I found them, so I obviously did put them there.

Senator BREAUX. Well, if you hadn't told Mr. Cutchin that you had destroyed the documents at that time, wouldn't he consider that the documents would still be in your office and subject to the Freedom of Information request?

Mr. ROBERTS. Senator, I just don't recall.

Senator BREAUX. I'm trying to find out why Mac Cutchin on March 28, shortly after meeting with Ben Hayes, yourself and William Ward, discussing a George White memo dealing with the Waterford plant that was found as the result of an Office of Inspection/Inspector General's investigation of the Waterford plant—that when he gets a Freedom of Information request for documents that clearly come under that general description, responds that there are no such documents in your office or under your control. Did he do that because you had told him you destroyed the documents? Or did he do that because you told him to put down, "no documents are present"? Why would he have responded, "no documents," when two weeks prior to that he looked at a document that fits the description of the documents that were requested?

Mr. ROBERTS. That's a very good question. I don't know. In no way have I ever purposely or intentionally tried to thwart a Freedom of Information request.

Senator BREAUX. Are you telling us that this Freedom of Information request, you did not get it, you did not see it? It was handled by the staff?

Mr. ROBERTS. That's my recollection.

Senator BREAUX. Did you discuss in the meeting with Mr. Hayes and Mr. Ward and Mr. Cutchin prior to this Freedom of Information request what would happen if anyone ever asked for the George White memo?

Mr. ROBERTS. I don't think that was ever discussed.

Senator BREAUX. But there's no question that the meeting with Ben Hayes and Mr. Ward and Mr. Cutchin and yourself—that the George White memo was discussed at that time?

Mr. ROBERTS. That was the reason for the meeting.

Senator BREAUX. So Mr. Cutchin knew about the George White memo, you knew about the George White memo. You get a Freedom of Information request for something that sounds exactly like the George White memo, and the response comes back from your office that there are no such documents. And I'm just trying to find out, is it because Mr. Cutchin was told by you that the document was destroyed?

Mr. ROBERTS. I don't think I told him that the documents were destroyed.

Senator BREAUX. I don't want to belabor the point, but can you give the committee any reason why, when the Freedom of Information request was made, that we get the response that there are no such documents existing?

Mr. ROBERTS. I don't have a very satisfactory answer. I'm sorry.

Senator BREAUX. Another point, and that will be the final point, Mr. Roberts, and maybe you can shed some light on this from your perspective, which I think is important.

John Glenn was sent a letter on May 13th of this year, 1987, by Gerry Sikorski, who is chairman of the Subcommittee on Human Resources, and he says to Senator Glenn, "As part of its investigations of the Office of Government Ethics' involvement in conflict of interest problems at the Tennessee Valley Authority, the House Post Office and Civil Service Subcommittee on Investigations last October developed information concerning the Nuclear Regulatory Commissioner Tom Roberts that may be relative to the inquiry" of Senator Glenn's committee, and I'm paraphrasing now. During the investigation and the subcommittee's inquiry, the staff learned that Commissioner Roberts had contacted the Director of OGE, David Martin, sometime in July of 1986 to inquire about the Office of Government Ethics' examination of conflict of interest problems at the TVA. At the hearing, Mr. Martin verified that he had been contacted by Mr. Roberts. Four days later, on October 3rd, 1986, two subcommittee staff members interviewed Commissioner Roberts to learn more about the nature and purpose of his contact with Mr. Martin.

Could you tell the committee the nature of the contacts, what they were about?

Mr. ROBERTS. Sure.

Senator BREAUX. It would be helpful.

Mr. ROBERTS. I called Mr. Martin in July of 1986, and I called him for two reasons. I had been reading accounts in the press, in the newspaper, that the validity of Stephen White—I think his title is Manager of Nuclear Power; he is a retired Navy Admiral in the TVA, hired to turn their nuclear program around—I was reading press reports that the legality of Mr. White's contractual arrangements with the TVA was being questioned. And according to what I read in the press, part of the questioning came from a Mr. Herb Sanger, who was being publicly quoted in the press, who was General Counsel at TVA.

In March of 1986, the NRC had a public meeting. We had the Board members, the General Counsel, the General Manager; we had Stephen White; and at the end of their presentation, Chairman Palladino asked if Commissioners had any questions. Well, at that time Congresswoman Schroeder was publicly raising the issue about the properness of Mr. White's contractual arrangements with TVA. So I asked Mr. White directly, "Are your contractual arrangements with the TVA right and proper?" And he gave me a long explanation, and then Board Member Waters made a rather flippant remark. He said, "Mr. Roberts, I'll give you a very good lawyer's answer to that question, and I'm that lawyer. It's perfectly legal." Then Mr. Sanger made a very strong declaration that he had looked into this matter and all was right and proper, and that conflicted directly with what I was reading in the newspaper, that Mr. Sanger in July was talking publicly about Mr. White's contractual arrangements. And I thought Mr. Martin should be aware of an absolute change in position.

Senator BREAUX. When Mr. Martin was before the committee Mr. Sikorski asked him, "Were you contacted by anybody at the NRC about your involvement in this ethics issue?" And Mr. Martin said, "I was contacted by a gentleman, yes." Mr. Sikorski said, "Tom Roberts?" Mr. Martin said, "Roberts is his name." Sikorski asked, "Did he call you questioning the interest taken in the controversy by you?" Mr. Martin said, "He called me because he was allegedly a prospective nominee to the TVA Board of Directors and asked me what in fact was going on down there, and I gave him a very limited and brief description of what we were doing, since that description comported with what already had been in the newspapers, and that was about the extent of it." Mr. Sikorski asked, "He didn't offer his opinion as to the matter?" Mr. Martin says, "Nor did I solicit it. It was a very brief conversation." Mr. Sikorski asked, "Do you know if he was contacted by Stone & Webster prior to making the phone call?" Mr. Martin says, "I have no idea," and he elaborates.

Were you contacted by Stone & Webster prior to making the call?

Mr. ROBERTS. No. No.

Senator BREAUX. Okay.

Mr. Reid, I'm sorry. Do you want to get in on this examination?

Senator REID. No questions, Mr. Chairman.

Senator BREAUX. Senator Simpson?

Senator SIMPSON. Well, Mr. Chairman, I thank you.

I appreciate your willingness to appear here and your responses. You could have taken the Fifth Amendment——

Mr. ROBERTS. I certainly did not want to do that, Senator Simpson.

Senator SIMPSON [continuing]. As you said that you could, and declined to testify. You did not do that. I think that we appreciate your willingness to assist in the Chairman's exploration of the matter and as you can see, he's going to pursue it and, in his way, will indeed find the answers. You will be a very busy person in the next few months, but apparently you want tell your story.

Mr. ROBERTS. Sir?

Senator SIMPSON. Apparently you want to tell your story.

Mr. ROBERTS. Absolutely.

Senator SIMPSON. That is not always a distinguishing trait of those residing in this community, so good luck. You'll be busy.

Senator BREAUX. I also want to echo what Senator Simpson said. We appreciate your being here. Again, you certainly have the right to invoke your constitutional privileges and not testify on matters that you feel they are protected by.

Mr. ROBERTS. Let me say this. I always want to testify, believe me.

Senator BREAUX. Candidly, I wish we had some more answers that were reflective of your memory of the situation. There are a lot of things that are of concern to me and, I think, to the other Members, about not being able to remember on some particular questions that we asked today. But I am pleased that you were able to come and to participate.

Another point is that I think that the staff and I and Senator Simpson and the other members of the committee are going to have to sit and go over what we've learned today and then communicate back to you if we have any recommendations, and we may have some additional questions which we'd like to present.

Mr. ROBERTS. Fine.

Senator BREAUX. With that, you're excused. We appreciate your being here.

Mr. ROBERTS. Thank you.

[Whereupon, at 10:44 a.m., the subcommittee was adjourned.]

[Additional material from Mr. Roberts for inclusion in the record follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

June 19, 1987

The Honorable John Breaux, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

With your permission, I would like to have included in the record of the June 3, 1987 hearing the enclosed letter to you from my attorney, Mr. Terrence O'Donnell. Mr. O'Donnell's letter responds to questions related to an FOIA request filed by The Times-Picayune Publishing Corporation on March 18, 1985.

Respectfully yours,

Thomas M. Roberts

Enclosure:
June 5, 1987 letter from
T.O'Donnell to Senator Breaux

cc: Senator Alan Simpson

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June 5, 1987

The Honorable John Breaux
United States Senate
Washington, D.C. 20510

Attn: Mr. Timothy Smith
194 Dirksen Senate Office Building

Dear Senator Breaux:

At the hearing before the Senate Subcommittee on Nuclear Regulation on June 3, you raised several questions about the response of Commissioner Roberts' office to a FOIA request filed by The Times Picayne Publishing Corporation on March 18, 1985. Because Mr. Roberts was unfamiliar with the request and did not have the benefit of the documentation before him, he was unable to provide you with the information requested at the time of the hearing.

At the conclusion of the hearing, Commissioner Roberts instructed this firm to look into the matter. Given the pendency of the Justice Department inquiry, it would be inappropriate for him to do so himself. We have accordingly reviewed agency records with respect to FOIA request 85-184 and have spoken with Mr. Cutchin. Our review of the records and discussions with Mr. Cutchin confirm the following:

1. Mr. Roberts was not consulted by anyone on his staff about FOIA request 85-184.

2. The office's response was handled solely by Mr. Cutchin and, perhaps, Mrs. Pat Kaplan, the Commissioner's secretary. That is apparently consistent with office routine and practice.

3. FOIA request 85-184 initially requested "all correspondence, memoranda, reports, studies and other documents that have been generated from Office of Investigations' investigations or reviews" concerning Waterford 3. (Emphasis added.) (Tab 1.) The request was received by the NRC on March 20, 1985.

4. On March 28, 1985, the NRC's Office of the Secretary forwarded the requests to the Legal Assistants of each Commissioner with a memorandum entitled "FOIA Request From Lynn Cunningham For All Records That Have Been Generated From OI Investigations Or Review Of Matters Concerning The Waterford Unit 3 Plant." (Emphasis added.) (Tab 2.) The memorandum of instruction stated, "Please search your office files and forward any documents subject to the request, except those originated in another Commissioner or staff office, . . ." (Emphasis added.)

5. On March 29, 1985, the FOIA officer in charge of the matter, Mr. Joseph Cawley, apparently called Mr. Thomas Combs in the Office of the Secretary to tell him to "hold off searching on this [request] until we can clarify the scope with the requester." (Tab 3.)

6. On March 29, 1985, Mr. Cutchin nevertheless responded to the Secretary on behalf of Commissioner Roberts' office: "Please advise J. Cawley that TMR office has no documents generated here." (Emphasis added.) (Tab 4.) Mr. Cutchin has confirmed to us that he read Request 85-184 to require only documents written or prepared by Commissioner Roberts' office with respect to then pending Waterford investigations, of which there were apparently several. Neither the "White memorandum" nor, indeed, Mr. Palladino's March 14 memorandum regarding the 1983 incident were ever even considered by Mr. Cutchin to be responsive to the request. It was for that reason, and that reason alone that Mr. Cutchin did not ask Mr. Roberts for any such documents. Mr. Cutchin confirms that the first time Commissioner Roberts told him that the documents relating to investigation of the 1983 leak may have been discarded was in March of 1987. No such statement or representation was made by Mr. Roberts to Mr. Cutchin in March 1985.

7. The scope of FOIA request 85-184 appears to have been construed similarly by other Commissioner offices. For example, Ms. Pat Davis, the legal assistant for Commissioner

Asselstine responded only with two memoranda written -- i.e., "originated" or "generated" -- by Mr. Asselstine. Mr. Asselstine's response is, moreover, explicit on the question. "As usual, we have other documents I have not identified because they were not prepared by or for this office and because they should be identified by other offices." (Tab 5.)

8. On April 4, 1985, the NRC wrote Ms. Cunningham of the Times-Picayne asking for clarification of the request. (Tab 6.) No response was forthcoming. As a consequence, the NRC closed the matter administratively on September 4, 1985 without follow-up.(Tab 7.)

I respectfully submit that the record demonstrates that neither Commissioner Roberts, nor any member of his staff knowingly or deliberately withheld documents responsive to FOIA request 85-184. Indeed, the request appears to have been construed uniformly to require only the production of documents written or prepared by Commission staff relating to then pending enforcement actions. Finally, Commissioner Roberts played no role whatsoever in reviewing or preparing the response filed by his office.

Very truly yours,

Terrence O'Donnell

Enclosures

cc: The Honorable Alan K. Simpson

The Times-Picayune Publishing Corporation
3800 HOWARD AVENUE, NEW ORLEANS, LOUISIANA 70140-1007 TELEPHONE (504) 586-3786

March 18, 1985

FREEDOM OF INFORMATION ACT REQUEST

FOIA-85-184

recd 3/20/85

Mr. Joseph Felton, Director
Division of Rules and Records
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Felton:

This request is made under the federal Freedom of Information Act, 5 U.S.C. 552.

Please send me copies of all correspondence, memoranda, reports, studies and other documents that have been generated from Office of Investigations' investigations or reviews of matters concerning the Waterford 3 nuclear plant at Taft, La., owned by Louisiana Power & Light Co.

The Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Therefore, I will expect you to send me all nonexempt portions of the records which I have requested, and ask that you justify any deletions by reference to specific exemptions of the Freedom of Information Act. I reserve the right to appeal your decision to withhold any materials.

I promise to pay reasonable search and duplication fees in connection with this request. However, I am a journalist employed by The Times-Picayune/The States-Item and intend touse the information I am requesting as the basis for newspaper articles. Therefore, I ask that you waive all search and duplication fees.

As I am making this request in the capacity of a journalist and this information is of timely value, I would appreciate any questions regarding my request be posed by telephone -- not by mail.

Thank you for your assistance and I look forward to receiving your reply within 10 days, as required by law.

Sincerely,

Lynn Cunningham

/lgc

The Times-Picayune SUNDAY
The Times-Picayune
The States-Item DAILY

East Jefferson Advertiser
West Bank Advertiser
THURSDAY and SUNDAY

St. Tammany Advertiser
East New Orleans Advertiser
St. Bernard Advertiser
THURSDAY

Special Instructions regarding FOIA search requirements are attached. If you have any questions, please telephone immediately the FOIA Branch contact listed below.

Linda L. Robinson, Chief
Freedom of Information and Privacy
Acts Branch

Enclosures: As stated

CONTACT: Joe Cawley
49-24269

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
SECRETARY

March 28, 1985

MEMORANDUM FOR: Bill Reamer
Mac Cutchin - 3/29
Pat Davis - 3/29
Steve Sohinki - 4/4/85
William Parler

FROM: Tom Combs, Chief,
Correspondence and Records Br.

SUBJECT: FOIA REQUEST FROM LYNN CUNNINGHAM FOR RECORDS GENERATED AS A RESULT OF OI INVESTIGATIONS OR REVIEWS OF WATERFORD 3 (FOIA-85-184)

Attached is the subject request. Please search your office files and forward any documents subject to the request, except those originated in another Commissioner or staff office, by C.O.B., April 2, 1985.

Any recommendation to withhold should be coordinated with the Office of the General Counsel.

Attachment:
As stated

Tom. FOIA-85-184 3/29/85

Per our phone discuss. on, please hold off searching on this one until we can clarify the scope with the requester.

Thanks, Joe Cawley

COMMISSIONER ROBERTS' OFFICE

Correspondence Route Slip

Date 3/29

1. Commissioner Roberts	Date	Comment	
	Info	Action	Initial/Comment
2. Administrative Asst.			
3. Technical Assistant			
(4) Legal Assistant		✓	
5. Special Assistant			

ACT-85-0236

COMMENTS DUE 4/2

ADD'L. NOTES/COMMENTS

jlw 4/1

	File	Return	Discard	Other
6. Pat Kaplan				Ms Adams T Cambus that there [illegible] no documents generated here! [illegible] 4/1
7. Terry Schultze				

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

March 29, 1985

MEMORANDUM TO: Tom Combs, Secy

FROM: Pat Davis, OCM PD

SUBJECT: FOIA 85-184 -- Waterford OI Investigations

I have identified the following documents subject to the above request:

(1) Memorandum for Chairman Palladino from JKA dated March 7, 1985 entitled "COMNP 85-14 - TMI-2 Operators at Waterford." This is being withheld as predecisional under Exemption 5.

(2) Memorandum for Commissioners from JKA dated January 9, 1985 subject: TMI-2 operators at Waterford. This is being withheld as predecisional under Exemption 5.

As usual we have other documents I have not identified because they were not prepared by or for this office and because they should be identified by other offices.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR

APR 04 1985

Ms. Lynn Cunningham
The Times-Picayune Publishing Corporation
3800 Howard Avenue
New Orleans, LA 70140-1097

IN RESPONSE REFER
TO FOIA-85-184

Dear Ms. Cunningham:

This is in regard to your letter dated March 18, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of records generated from Office of Investigation (OI) reviews or investigations of matters concerning the Waterford 3 nuclear power plant at Taft, Louisiana.

We are seeking clarification of your request in order to define the scope of the search for those members of the NRC staff who will be responding to your request. As a possible method for clarifying the scope of your request, we refer you to our response to your FOIA request FOIA-85-188, dated April 2, 1985. In response to that request, we sent to you a list of past and present investigations undertaken by the NRC's OI regarding issues raised at the Waterford 3 nuclear plant. In addition, as Joseph Cawley discussed with you during a March 28, 1985, telephone conversation, we are responding to another of your requests (FOIA-84-297) by sending you lists of documents produced in regard to the special Waterford Task Force activities related to certain OI investigations. These documents are now available at the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC 20555, in folders FOIA-84-426, FOIA-84-449, FOIA-84-455, FOIA-84-506, and FOIA-84-507.

Upon your review of the responses to your FOIA requests noted above, please telephone Joseph Cawley at (301) 492-4269 to discuss the scope of this FOIA request.

Sincerely,

J. M. Felton, Director
Division of Rules and Records
Office of Administration

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SEP 4 1985

MEMORANDUM FOR: The File

FROM: Joseph T. Cawley, II
FOI/PA Specialist

SUBJECT: FOIA REQUEST FROM LYNN CUNNINGHAM FOR RECORDS GENERATED FROM OFFICE OF INVESTIGATION (OI) REVIEWS OR INVESTIGATIONS OF MATTERS CONCERNING THE WATERFORD 3 NUCLEAR POWER PLANT AT TAFT, LOUISIANA (FOIA-85-184)

On April 4, 1985, we responded to the requester through reference to hundreds of pages of appendices from previously closed Waterford FOIA cases (including FOIA-84-426, FOIA-84-449, FOIA-84-455, FOIA-84-506, and FOIA-84-507) in the belief that the documents listed in those appendices would contain the information sought by the requester. We had supplied these appendices to the requester in response to FOIA-84-297. In our April 4, 1985, letter to the requester, we asked the requester to telephone me to provide clarification as to any additional records in which she may be interested.

As of September 3, 1985, we have received no response from the requester. I met with Linda Robinson, and we both agree that, in all likelihood, the Waterford appendices we sent the requester were responsive to this request. At Linda's request, therefore, I am administratively closing this FOIA case.

Joseph T. Cawley, II
FOI/PA Specialist